



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Number: **201406018**  
Release Date: 2/7/2014

Contact Person:

Date: November 13, 2013

XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

UIL: 501.17-00

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in Code section 501(c)(17).

We made this determination for the following reason(s):

You are not organized as required under § 501(c)(17) and you have not met the requirements necessary to qualify for tax-exempt status as an organization described under § 501(c)(17). Therefore, you do not qualify for tax-exempt status as an organization described under § 501(c)(17).

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Karen Schiller  
Acting Director, Exempt Organizations  
Rulings and Agreements

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Date: September 25, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX

Uniform Issue List

501.17-00

Corporation =  
Date 1 =  
X =  
Website =

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code § 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under § 501(c)(17). The basis for our conclusion is set forth below.

FACTS:

You are a trust, incorporated on Date 1 to fund a supplemental unemployment benefits plan ("Plan"). You state that Plan is a "wage and salary continuation plan whose activities have just commenced and are in their initial stages."

You state that you are sponsored by Corporation. In addition to sponsoring you, Corporation's officers and shareholders may serve as your trustee(s).

You state your present and future sources of financial support consist of "[c]ontributions made by the [Corporation]. Future sources of support may include contributions made by the [Corporation] derived from individual payments intentionally made by participants for the purpose of financially supporting the trust." Additional funding will also come from "[i]nvestment results from funds held by the trust."

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According to your Form 1024, out of 4 Corporation employees, 3 were covered under the Plan. You stated that none of the covered employees was a shareholder, officer, self-employed person or highly compensated employee. In responding to the Internal Revenue Service's ("Service") request for additional information, you updated the employee information. You stated that there is now only 1 Corporation employee, and this 1 employee is covered under the Plan. You further stated that this employee is neither a shareholder, officer, self-employed person nor a highly compensated employee.

You submitted a document entitled "Corporation Wage Protection Plan and Trust" dated February 15, 2010. The document (hereafter "Plan and Trust") states that the Plan and Trust is between Corporation, Corporation's employees, employees of several employers and several trustees.

Pursuant to the Plan and Trust, your sole purpose is to provide wage and benefit protection, supplemental unemployment benefits ("Benefits"), to your members and their dependents as provided for under § 501(c)(17). The Plan and Trust defines a "member" as "any employee of Corporation or an employee of one or more of several employers having reached twenty-five (25) years of age..." who meets certain criteria related to nondiscrimination requirements set forth in § 501(c)(17) and minimal hourly employment requirements.

The Plan and Trust defines a qualifying layoff as an involuntary separation from employment due directly to (i) a reduction in force resulting from either a temporary or permanent lack of work or (ii) a discontinuance of operations or (iii) cyclical, seasonal, or technological causes. It further provides that from time to time the Plan Administrator shall formulate written objective standards to determine whether or not the cause of a separation from employment is a qualifying layoff. "Plan Administrator" is defined as either the Sponsor or another company or organization designated by the Sponsor.

The Plan and Trust also states that the Benefits that are provided are intended to supplement an Eligible Member's income and is to be payable to the relevant Eligible Member, if living; otherwise pursuant to Section 10.5 (Section 10.5 was not included in the copy of the Plan and Trust received by the Service). It further states that there is to be no amendment that "shall authorize or permit any part of the Trust Fund other than such part as is required to pay taxes and administration expenses to be used or diverted to purposes other than for the exclusive benefit of the Eligible Members and their beneficiaries or estates...."

You referenced Website in your Form 1024 (Service printed copies of Website, sent copies to you, and notified you that copies of Website is now part of your § 501(c)(17) exemption application file).

Website stated that you are "a supplemental unemployment wage protection plan now available to a greater number of employees working for a broad range of employers from coast to coast." Website further stated that any W-2 employee who has worked for the past 13 months for the same employer and who works 36 or more hours per week is eligible to become your member.

According to Website, your members are required to pay a yearly membership fee in the amount of x. A member's monthly contribution will depend on the monthly unemployment supplemental benefit a member wants to receive (identified as the "Benefit Level" in the Plan

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and Trust). The Plan and Trust states that the amount of the benefit to be paid ("Daily Benefit Amount" during the Eligible Layoff Period is calculated based upon a formula that is tied to the Benefit Level selected and paid for by the Member.

You represent that your assets will be used to pay Benefits and administrative expenses associated with providing Benefits, and you will not distribute any assets to any shareholder or member. Members of the Plan "must be an employee who is neither an officer, executive, shareholder, highly compensated employee, nor a person whose principal duties consist of supervising the work of other employees who routinely works at least 36 hours per week and is a member of [Corporation]".

You state that at no time, inclusive Plan's termination, shall any portion of your assets revert to any person or be used for any other purpose except provide Benefits to members and their dependents.

You also stated in your additional response to the Service request for additional information that you are not established pursuant to any Collective Bargaining Agreement(s).

#### LAW:

Section 501(c)(17)(A) provides for the exemption from taxation a trust or trusts forming part of a plan that uses its corpus or income exclusively to provide for the payment of supplemental unemployment compensation benefits:

(i) it is impossible at any time prior to the satisfaction of all liabilities for any part of the corpus or income to be used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits,

(ii) such benefits are payable to employees under a classification which is set forth in the plan and which is found not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of § 414(q)), and

(iii) such benefits do not discriminate in favor of employees who are highly compensated employees. A plan shall not be considered discriminatory within the meaning of this clause merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

Section 501(c)(17)(D) provides that the term "supplemental unemployment compensation benefits" means only (i) benefits which are paid to an employee because of his involuntary separation from the employment of the employer (whether or not such separation is temporary) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, and (ii) sick and accident benefits subordinate to the benefits described in clause (i).

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Section 503(a)(1)(A) provides that an organization described in § 501(c)(17) shall not be exempt from taxation under § 501(a) if it has engaged in a prohibited transaction after December 31, 1959.

Section 503(b) provides that prohibited transactions includes any transaction in which an organization subject to the provisions of this section engages in, which results in a substantial diversion of the organization's income or corpus to the creator of such organization (if a trust) or a person who has made a substantial contribution to such organization.

Section 505(c) provides that an organization shall not be treated as an organization described in § 501(c)(17), unless it has given notice to the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of such status.

Treas. Reg. § 1.501(c)(17)-1(a)(2) provides that for a trust to qualify for tax-exempt status as an organization described under § 501(c)(17), the trust must be a valid, existing trust under local law and is evidenced by an executed written document.

Treas. Reg. § 1.501(c)(17)-1(a)(3) provides that for a trust to qualify for tax-exempt status as an organization described in § 501(c)(17), the trust must be part of a written plan established and maintained by an employer, his employees, or both the employer and his employees, solely for the purpose of providing supplemental unemployment compensation benefits (as defined in § 501(c)(17)(D) and paragraph (b)(1) of Treas. Reg. § 1.501(c)(17)-1).

Treas. Reg. § 1.501(c)(17)-1(a)(4) provides that for a trust to qualify for tax-exempt status as an organization described in § 501(c)(17), the trust must be part of a plan which provides that except for the payment of any necessary or appropriate expenses in connection with the administration of a plan, the corpus and income of the trust cannot (in the taxable year, and at any time thereafter, before the satisfaction of all liabilities to employees covered by the plan) be used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits. Thus, if the plan provides for the payment of any benefits other than supplemental unemployment compensation benefits as defined in paragraph (b) of this section, the trust will not be entitled to exemption as an organization described in § 501(c)(17). However, the payment of any necessary or appropriate expenses in connection with the administration of a plan providing supplemental unemployment compensation benefits shall be considered a payment to provide such benefits and shall not affect the qualification of the trust.

Treas. Reg. § 1.501(c)(17)-1(a)(5) provides that for a trust to qualify for tax-exempt status as an organization described in § 501(c)(17), the trust must be part of a plan whose eligibility conditions and benefits do not discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees.

Treas. Reg. § 1.501(c)(17)-1(a)(6) provides that for a trust to qualify for tax-exempt status as an organization described in § 501(c)(17), the trust must be part of a plan which requires that benefits are to be determined according to objective standards. Thus, a plan may provide similarly situated employees with benefits which differ in kind and amount, but may not permit such benefits to be determined solely in the discretion of the trustees.

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Treas. Reg. § 1.501(c)(17)-1(b)(1) provides that the term supplemental unemployment compensation benefits means only (i) Benefits paid to an employee because of his involuntary separation from the employment of the employer, whether or not such separation is temporary, but only when such separation is one resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions; and (ii) Sick and accident benefits subordinate to the benefits described in subdivision (i) of this subparagraph.

Treas. Reg. § 1.501(c)(17)-1(b)(3) provides, in part, that whether there is an involuntary separation from the employment of the employer is a question to be decided with regard to all the facts and circumstances.

Treas. Reg. § 1.501(c)(17)-1(b)(5) provides that, generally, a sick and accident benefit payment is an amount paid to an employee in the event of his illness or personal injury (whether or not such illness or injury results in the employee's separation from the service of his employer). In addition, the phrase sick and accident benefits includes amounts provided under the plan to reimburse an employee for amounts he expends because of the illness or injury of his spouse or a dependent (as defined in § 152). Sick and accident benefits may be paid by a trust described in § 501(c)(17) only if such benefits are subordinate to the separation payments provided under the plan of which the trust forms a part. Whether the sick and accident benefits provided under a supplemental unemployment compensation benefit plan are subordinate to the separation benefits provided under such plan is a question to be decided with regard to all the facts and circumstances.

Treas. Reg. § 1.501(c)(17)-2(a) provides, in part, that supplemental unemployment compensation benefits as defined in § 501(c)(17)(D) and paragraph (b)(1) of Treas. Reg. § 1.501(c)(17)-1 may include furnishing of medical care at an established clinic, furnishing of food, job training and schooling, and job counseling. It further provides that supplemental unemployment compensation benefits may be provided only to an employee and only under circumstances described in paragraph (b)(1) of Treas. Reg. § 1.501(c)(17)-1. Thus, a trust described in § 501(c)(17) may not provide, for example, for the payment of a death, vacation, or retirement benefit.

Treas. Reg. § 1.501(c)(17)-2(e) provides, in part, that a plan must satisfy the requirements of § 501(c)(17) throughout the entire taxable year of the trust in order for the trust to be exempt for such year.

Treas. Reg. § 1.501(c)(17)-2(f) provides that several trusts may be designated as constituting part of one plan which is intended to satisfy the requirements of § 501(c)(17), in which case all of such trusts taken as a whole must meet the requirements of such section.

Treas. Reg. § 1.501(c)(17)-2(g) provides that a trust forming part of a plan of several employers, or the employees of several employers, will be a supplemental unemployment benefit trust described in § 501(c)(17) if all the requirements of that section are otherwise satisfied.

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Treas. Reg. § 1.503(b)-1(a) provides that tax-exempt status will be denied to such organizations which engage in certain transactions (prohibited transactions as set forth in § 503(b)) which inure to the private advantage of (1) the creator of such organization (if it is a trust) or, (2) any substantial contributor to such organization, among others.

Treas. Reg. § 1.505(c)-1T A-1 provides that an organization will not be recognized as exempt under § 501(c)(17) as a trust forming part of a plan providing for the payment of supplemental unemployment compensation benefits unless notification is given to the Service.

Treas. Reg. § 1.505(c)-1T A-3 provides that organization will not be treated as described under § 501(c)(17) unless the organization notifies the Service that it is applying for recognition of exemption. The notice for exemption under § 501(c)(17) is filed by submitting a properly completed and executed Form 1024, "Application for Recognition of Exemption Under Section 501(a) or for Determination Under Section 120 together with the additional information required under Q&A-4 and Q&A-5. The Service will not accept a Form 1024 for any organization or trust that is seeking tax-exempt status as an organization described under § 501(c)(17) before such entity has been organized.

Treas. Reg. § 1.505(c)-1T A-4 provides that notice for exemption under § 501(c)(17) will not be considered complete unless, in addition to a properly completed and executed Form 1024, the organization or trust submits a full description of the benefits available to participants under § 501(c)(17). Moreover, both the terms and conditions of eligibility for membership and the terms and conditions of eligibility for benefits must be set forth. This information may be contained in a separate document, such as a plan document, or it may be contained in the creating document of the entity.

Treas. Reg. § 1.505(c)-1T A-5 provides that if an organization or trust claiming exemption under § 501(c)(17) is organized and maintained pursuant to a collective bargaining agreement between employee representatives and one or more employer, only one Form 1024 is required to be filed for the organization or trust, regardless of the number of employers originally participating in the agreement. Moreover, once a Form 1024 is filed pursuant to a collective bargaining agreement, an additional Form 1024 is not required to be filed by an employer who thereafter participates in that agreement. When benefits are provided pursuant to a collective bargaining agreement, the notice will not be considered complete unless, in addition to a properly completed and executed Form 1024, a copy of the collective bargaining agreement is also submitted together with the additional information delineated in Q&A-4.

#### ANALYSIS:

To qualify for tax-exempt status as an organization described under § 501(c)(17), among other requirements, a trust must be part of a written plan established and maintained by an employer, his employees, or both the employer and his employees, solely for the purpose of providing supplemental unemployment compensation benefits. See Treas. Reg. § 1.501(c)(17)-1(a)(3). The trust must also be a valid, existing trust under local law and is evidenced by an executed written document. See Treas. Reg. § 1.501(c)(17)-1(a)(2).



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After reviewing your application for tax-exempt status under § 501(c)(17), it is conclusive that you do not qualify for tax-exempt status as an organization described under § 501(c)(17). You are not organized as required under § 501(c)(17) and you have not met the requirements necessary to qualify for tax-exempt status as an organization described under § 501(c)(17).

Section 501(c)(17) is unambiguous. It requires an employer or its employees or both (not employees of several employers) that wishes to have a trust exempted from taxation as an organization described under § 501(c)(17) to submit a valid trust which is part of a written plan which the employer or its employees or both have established and will maintain solely for the purpose of providing supplemental unemployment benefits. See also Treas. Reg. § 1.501(c)(17)-1(a)(3). The trust must be a valid, existing trust under local law and evidenced by an executed written document. See Treas. Reg. § 1.501(c)(17)-1(a)(2).

You were created by Corporation, with the Plan and Trust purportedly entered into between Corporation, Corporation's employees, employees of several employers and several trustees. You define a "member" as "any employee of Corporation or an employee of one or more of several employers having reached twenty-five (25) years of age..." Your website states that you are "a supplemental unemployment wage protection plan now available to a greater number of employees working for a broad range of employers from coast to coast."

You are not a trust established and maintained by an employer or employees of an employer or both to provide supplemental unemployment compensation benefits to the employees of the employer. Rather, you are a single trust that is part of a single plan that has been established to provide supplemental unemployment benefits to employees of multiple unrelated employers. From your application, it is clear that you are seeking tax-exempt status as a trust that will provide Benefits to employees of several employers and not employees of a single employer. This is contrary to the provisions of Treas. Reg. § 1.501(c)(17)-1(a)(3).

Treas. Reg. § 1.501(c)(17)-1(a)(3) requires each employer or its employees or both that wishes to provide supplemental unemployment compensation benefits to the employees to establish and maintain a trust that is part of a written plan. Section 505(c) provides that an organization shall not be treated as one described in § 501(c)(17) unless it has given notice to the Secretary that it is applying for recognition of such status. This notice is given by filing Form 1024 with the Service. See Treas. Reg. § 1.505(c)-1T A-3. The Service cannot accept a Form 1024 from any organization or trust that is seeking recognition under § 501(c)(17) before such entity has been organized. See Treas. Reg. § 1.505(c)-1T A-3.

Pursuant to Treas. Reg. § 1.505(c)-1T A-5, if an organization or trust seeks exemption under § 501(c)(17) pursuant to a collective bargaining agreement between employees' representatives and one or more employers, only one Form 1024 is required to be filed for the organization or trust, regardless of the number of employers originally participating in the agreement. In your responses to the Service request for additional information, you stated that you are not established pursuant to a collective bargaining agreement. Therefore, you are ineligible to submit one Form 1024 application on behalf of employees of multiple employers who are not covered by a collective bargaining agreement(s).

You cited Treas. Reg. § 1.501(c)(17)-2(g) which provides that a trust forming part of a plan of

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several employers or the employees of several employers will be a supplemental unemployment benefit trust described in § 501(c)(17) if all the requirements of that section are otherwise satisfied. This means that to qualify for exemption, the other requirements of § 501(c)(17) must be satisfied, including, but not limited to:

- (1) the trust must be a valid, existing trust under local law and is evidenced by an executed written document;
- (2) the trust must be part of a written plan established and maintained by the employers or the employees of several employers solely for the purpose of providing supplemental unemployment compensation benefits as defined in § 501(c)(17) (D);
- (3) the trust must be part of a plan whose benefits are payable to employees under a classification that is found by IRS not to discriminate in favor of highly compensated employees and the benefits do not discriminate in favor of highly compensated employees;
- (4) the trust must be part of a plan which requires that benefits are to be determined according to objective standards; and,
- (5) the plan must provide for the payment of Benefits to the employees in a manner consistent with the Code and regulations.

The notification requirements of § 505(c) and the prohibited transaction requirements of § 503 also apply.

Treas. Regs. §1.501(c)(17)-2(g) requires that the trust or organization seeking tax-exempt status as an organization described under § 501(c)(17) be part of a plan that has been established and maintained by several employers or the employees of several employers. You have not shown that you are such a plan as described under Treas. Regs. §1.501(c)(17)-2(g).

The Plan and Trust identifies your Sponsor as being the Corporation, its employees and the employees of several employers. However, only the named sponsor (Corporation) appears to be a party to the Plan, with the sole beneficiary now being Corporation's employee. It is clear that you have been established as a mechanism for rendering Benefits to employees of multiple employers through a single trust without having to comply with the statutory requirements for tax-exempt status as an organization described in § 501(c)(17) and the applicable regulations.

#### CONCLUSION:

Because you are not an organization described under § 501(c)(17), you do not qualify for tax-exempt status under § 501(a).

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You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

*Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.*

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

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You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois G. Lerner  
 Director, Exempt Organizations